

OIP
JUN 26 2002
PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:

Bradley J. Coates et al.

Serial No. 09/448,086

Filed: November 23, 1999

BONE GRAFTS

)
) Examiner
) Isabella
)
) Group Art Unit 3738
)
)
)

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231 on: June 20, 2002

JAMES B. MYERS, JR.

Name of Registered Representative

Signature

Date of Signature

PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT
UNDER 35 CFR §1.181

Hon. Commissioner for Patents
Washington, DC 20231

Sir:

In this Petition, Applicants respectfully request that the Commissioner withdraw the holding of abandonment for the above-captioned application pursuant to his authority under 37 CFR §1.181(a)(1) and pass this application to issuance. Applicants request that the fee for this petition be charged to deposit account 23-3030. Please provide any extensions of time that may be necessary and charge any additional fees or refund any overpayments to deposit account 23-3030, but do not include the payment of any issue fees that are or may become due.

Statement Of The Facts

07/19/2004 HLE555 00000001 233030 09488086

01 FC:2452

55.00 DA

The undersigned declares and states as follows:

1. A U.S. Patent Application Serial No. 09/448,086 ("the subject application") was filed on November 23, 1999 and claimed priority to prior U.S. Patent Application Serial No. 08/948,135 (now U.S. Patent No. 5,989,289) which is a continuation of 08/902,937 (now

abandoned) which is a Continuation-in-Part of 08/740,031 (now abandoned) which is a Continuation-in-Part of 08/603,676 (now abandoned) which is a Continuation-in-Part of 08/543,563 (now abandoned) which is a Continuation-in-Part of 08/603,675 (now abandoned) which is a Continuation-in-Part of 08/543,563 (now abandoned).

2. The first Office Action for the subject application dated February 27, 2001 was received. In response, the undersigned attorney signed and submitted a Response to First Office Action.

3. During prosecution of the subject application, a Final Office Action dated August 14, 2001 was received. In that Office Action, claims 1-19 were rejected under a non-statutory double-patenting rejection over U.S. Patent No. 5,989,289, the patent issuing from the parent application of the subject application.

4. In response, the undersigned attorney signed and submitted an Amendment and Response to Final Office Action under 37 CFR 1.116 and requested Expedited Examination Procedure for the Response. In addition to the Response, the undersigned attorney signed and submitted a Terminal Disclaimer. Copies of the Response to Final Office Action and the Terminal Disclaimer with attachments are appended to this petition as Exhibit A.

5. A Notice of Abandonment for the subject application dated May 1, 2002 was received. The Notice of Abandonment indicated that the reply was received on January 17, 2002 and that the Terminal Disclaimer filed concurrent with the amendment was not proper since the person who signed the Terminal Disclaimer is not listed as an attorney of record.

6. It is noted that the undersigned attorney signed and submitted on Information Disclosure Statement, a Response to First Office Action, a Response to Final Office Action and the Terminal Disclaimer pursuant to 37 C.F.R. §1.36(a).

7. Further it is noted that the U.S. Patent and Trademark Office acknowledged receipt of the Response and Amendment to Final Office Action and Terminal Disclaimer on January 17, 2002, approximately one month prior to the end of the statutory period for responding to the office action. The undersigned attorney actually submitted the Response and Terminal Disclaimer on November 14, 2001 within the three month shortened statutory period for replying to the Final Office Action. The Response and Terminal Disclaimer included a certification by the undersigned attorney under 37 C.F.R. §1.08.

8. The undersigned attorney never received an Advisory Action in this case apprising him of any deficiencies in the Response to Final Office Action.

10. Pursuant to MPEP §714.05, actions, especially those filed near the end of a period for reply, should be inspected immediately upon filing to determine whether they are completely responsive to the preceding Office Action so as to prevent abandonment of the application. Subsection J specifically refers to a Terminal Disclaimer.

11. Submitted herewith is a Terminal Disclaimer signed by an attorney specifically listed on the Declaration and Power of Attorney that was filed concurrent with the subject application. The Terminal Disclaimer is appended as Exhibit B. The Declaration and Power of Attorney is appended as Exhibit C.

9. Applicants respectfully request that the Commissioner exercise his supervisory authority and withdraw the holding of abandonment for the subject application.

10. The undersigned attorney submits that the Response and Terminal Disclaimer filed November 14, 2001 are fully responsive to the Final Office Action dated August 14, 2001 and requests that these be entered in the subject application.

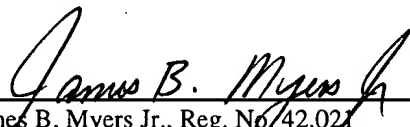
11. In the alternative, the undersigned attorney requests that the Terminal Disclaimer appended herewith as Exhibit B and the Response to Final Office Action filed on November 14, 2001 be entered in the subject application and that the subject application be passed to issuance.

12. In yet another alternative, the undersigned attorney respectfully requests that this petition be considered as a petition to revive the subject application under 35 USC §1.37(a) or under 35 USC §1.35(b). In this event, please enter the Terminal Disclaimer appended herewith as Exhibit B and the Response to Final Office Action filed on November 14, 2001 and pass the subject application to issuance. If necessary please charge the statutory fee for the Petition to deposit account 23-3030.

13. The undersigned states that the entire delay in filing the required reply from the due date until the filing of the grantable petition pursuant to 35 U.S.C. § 1.137(b) was unintentional.

14. I declare that all statements made herein of my own knowledge are true and that all statements made on information are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

By: 
James B. Myers Jr., Reg. No. 42,021
WOODARD EMHARDT NAUGHTON
MORIARTY & McNETT
Bank One Center/Tower
111 Monument Circle, Suite 3700
Indianapolis, IN 46204-5137
(317) 634-3456



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

OCTOBER 28, 1998

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WOODARD, EMHARDT ET AL
J. ANDREW LOWES
111 MONUMENT CIRCLE, SUITE 3700
BANK ONE CENTER/TOWER
INDIANAPOLIS, INDIANA 46204-5137



100789640A

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RECORDATION DATE: 08/07/1998

REEL/FRAME: 9366/0071
NUMBER OF PAGES: 7

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:

COATES, BRADLEY J.

DOC DATE: 10/03/1997

ASSIGNOR:

VAN HOECK, JAMES

DOC DATE: 10/03/1997

ASSIGNOR:

POYNER, JEFFERY W.

DOC DATE: 10/03/1997

ASSIGNEE:

SDGI HOLDINGS, INC.
1800 PYRAMID PLACE
MEMPHIS, TENNESSEE 38132

SERIAL NUMBER: 08948135
PATENT NUMBER:

FILING DATE: 10/09/1997
ISSUE DATE:

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NOV 9 1998

9366/0071 PAGE 2

STEVEN POST, EXAMINER
ASSIGNMENT DIVISION
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08-11-1998



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Patent and Trademark Office

PATENT

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Submission Type

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- ☐ Resubmission (Non-Recordation)
Document ID#
- ☐ Correction of PTO Error
Reel # Frame #
- ☐ Corrective Document
Reel # Frame #

Conveyance Type

- ☒ Assignment ☐ Security Agreement
- ☐ License ☐ Change of Name
- ☐ Merger ☐ Other
- U.S. Government
(For Use ONLY by U.S. Government Agencies)
- ☐ Departmental File ☐ Secret File

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Month Day Year

Second Party

- Name (line 1) Execution Date
Month Day Year
- Name (line 2)

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- Address (line 2)
- Address (line 3)
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Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0551-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0551-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

08/11/98 0000015 0894135 40.00 00
01 FC

Correspondent Name and Address

Area Code and Telephone Number **(317) 634-3456**

Name **J. Andrew Lowes**

Address (line 1) **Woodard, Embardt, Naughton, Moriarty & McNert**

Address (line 2) **111 Monument Circle, Suite 3700**

Address (line 3) **Bank One Center/Tower**

Address (line 4) **Indianapolis, Indiana 46204-5137**

Pages

Enter the total number of pages of the attached conveyance document including any attachments.

8

Application Number(s) or Patent Number(s)

☐ Mark if additional numbers attached

Enter either the Patent Application Number or the Patent Number (DO NOT ENTER BOTH numbers for the same property).

Patent Application Number(s)

08/948,135

Patent Number(s)

If this document is being filed together with a new Patent Application, enter the date the patent application was signed by the first named executing inventor.

Month Day Year

Patent Cooperation Treaty (PCT)

Enter PCT application number only if a U.S. Application Number has not been assigned.

PCT PCT PCT
PCT PCT PCT

Number of Properties

Enter the total number of properties involved.

#

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41): \$ **40.00**

Method of Payment:
Deposit Account

Enclosed ☒ Deposit Account ☐

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

23-3030

Authorization to charge additional fees:

Yes ☒ No ☐

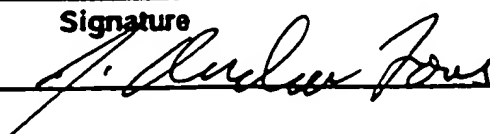
Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Name of Person Signing

J. Andrew Lowes

Signature



Date

August 4, 1998

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Patent and Trademark Office
PATENT

Conveying Party(ies)

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Enter additional Conveying Parties

Name (line 1) Jeffery W. Poyner

Execution Date
Month Day Year

10 3 97

Name (line 2)

Execution Date
Month Day Year

Name (line 1)

Name (line 2)

Name (line 1)

Execution Date
Month Day Year

Name (line 2)

Receiving Party(ies)

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Address (line 2)

Address (line 3)

City

State/Country

Zip Code

Name (line 1)

Name (line 2)

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

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Application Number(s) or Patent Number(s)

☐ Mark if additional numbers attached

Enter either the Patent Application Number or the Patent Number (DO NOT ENTER BOTH numbers for the same property).

Patent Application Number(s)

Patent Number(s)

08/948,135

ASSIGNMENT

WHEREAS, Bradley A. Coates, James Van Hoeck and Jeffery Poyner, of 1760 Nuckolls Road, Rossville, TN 38066; 754 Tealwood Lane, Cordova, TN 38018; and 234 Oxford Drive, Atoka, TN 38004, hereinafter referred to as Assignors, have made a new and useful invention in **BONE GRAFT** for which Assignors have made or will make application for Letters Patent of the United States; and

WHEREAS, SDGI Holdings, Inc., hereinafter referred to as Assignee, a corporation of the State of Delaware having a principal place of business 1800 Pyramid Place, Memphis, TN 38132 desires to acquire all of the entire right, title, and interest in, to and under said invention disclosed, described and claimed or intended so to be in said application, and in, to and under said application, and in, to and under any and all Letters Patent, United States and foreign, which may be obtained therefor and thereon;

NOW, THEREFORE, to all whom it may concern, be it known that for an in consideration of the sum of One Dollar (\$1.00) and other good, valuable and sufficient considerations to Assignors in hand paid, the receipt of which is hereby acknowledged, Assignors have sold, assigned and transferred, and by these presents do sell, assign and transfer unto Assignee, all of the entire right, title, and interest in, to and under said invention disclosed, described and claimed or intended so to be in said application, and in, to and under said application for United States Letters Patent executed by Assignors this 3rd day of October, 1997, and any and all other applications thereon and arising therefrom, including any and all divisions and continuations thereof,

and any and all patents to be issued and obtained therefor and thereon, United States and foreign, including all reissues and extensions thereof.

Assignors hereby authorize and request the firm of Woodard, Emhardt, Naughton, Moriarty & McNett of Bank One Center Tower, 111 Monument Circle, Suite 3700, Indianapolis, Indiana 46204-5137 to insert here in parentheses (**) the date and serial number of said application when officially known and Assignors hereby authorize and request the Honorable Assistant Secretary and Commissioner of Patents and Trademarks to issue said Letters Patent to Assignee, its assigns and legal representatives.

Assignors agree to assign and execute any and all other papers necessary or desirable for the procurement of Letters Patent on said invention in this and all foreign countries for the use of Assignee.

**Serial No. 08/948,135
Filed October 9, 1997

WITNESS Assignors' hands this 3rd day of October, 1997.

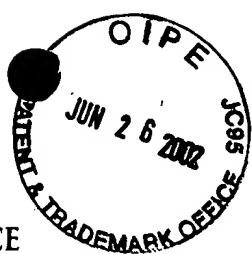
Bradley A. Coates
Bradley A. Coates
J. ~~BR~~ ~~gub~~
SVH

James E. Van Hoeck
James Van Hoeck

Jeffery W. Poyner
Jeffery Poyner
Jeffrey W. Poyner ~~gub~~
JWH ~~FS~~



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WOODARD, EMHARDT, NAUGHTON, ET AL
JAMES B. MYERS, JR.
111 MONUMENT CIRCLE, STE. 3700
INDIANAPOLIS, IN 46204-5137

Woodard, Emhardt, Naughton,
Montarthy & McNett

Chief Information Officer
Washington, DC 20231
www.uspto.gov



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RECORDATION DATE: 01/17/2002

REEL/FRAME: 012491/0666
NUMBER OF PAGES: 4

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:
COATES, BRADLEY J.

DOC DATE: 10/03/1997

ASSIGNOR:
VAN HOECK, JAMES

DOC DATE: 10/03/1997

ASSIGNOR:
POYNTER, JEFFREY W.

DOC DATE: 10/03/1997

ASSIGNEE:
SDGI HOLDINGS, INC.
1800 PYRAMID PLACE
MEMPHIS, TENNESSEE 38132

SERIAL NUMBER: 09448086
PATENT NUMBER:

FILING DATE: 11/23/1999
ISSUE DATE:

012491/0666 PAGE 2

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ASSIGNMENT DIVISION
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(Rev. 03/01)

OMB No. 0651-0027 (exp. 5/31/2002)

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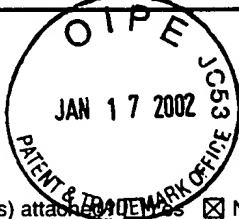
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101963867

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1. Name of conveying party(ies):

Bradley J. Coates
James Van Hoeck
Jeffrey W. PoynterAdditional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

3. Nature of conveyance:

- ☒ Assignment ☐ Merger
☐ Security Agreement ☐ Change of Name
☐ Other _____

Execution Date: October 3, 1997

2. Name and address of receiving party(ies)

Name: SDGI Holdings, Inc.

Internal Address: _____

Street Address: 1800 Pyramid PlaceCity: Memphis State: Tennessee Zip: 38132Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application number(s) or registration number(s):

If this document is being filed together with a new application, the execution date of the application is: _____

A. Patent Application No.(s)

09/448,086

B. Patent No.(s)

Additional number(s) attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: James B. Myers, Jr.Internal Address: Woodard, Emhardt, Naughton, Moriarty
& McNettStreet Address: Bank One Center/Tower, 111 Monument
Circle, Suite 3700City: Indianapolis State: Indiana Zip: 46204-5137

6. Total number of applications and patents involved

1

7. Total fee (37 CFR 3.41) \$ 40.00

- ☒ Enclosed
☐ Authorized to be charged to deposit account

8. Deposit account number:

23-3030

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9. Statement and signature.

*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.*James B. Myers, Jr.
Name of Person SigningNovember 14, 2001
Date

Total number of pages including cover sheet, attachments, and document:

9

Mail documents to be recorded with required cover sheet information to:
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Washington, D.C. 20231

01/23/2002 MWOLDER1 00000124 233030 09448006

02 FC:581

40.00 OF

1-17-02

ASSIGNMENT

WHEREAS, Bradley A. Coates, James Van Hoeck and Jeffery Poyner, of 1760 Nuckolls Road, Rossville, TN 38066; 754 Tealwood Lane, Cordova, TN 38018; and 234 Oxford Drive, Atoka, TN 38004, hereinafter referred to as Assignors, have made a new and useful invention in **BONE GRAFT** for which Assignors have made or will make application for Letters Patent of the United States; and

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NOW, THEREFORE, to all whom it may concern, be it known that for an in consideration of the sum of One Dollar (\$1.00) and other good, valuable and sufficient considerations to Assignors in hand paid, the receipt of which is hereby acknowledged, Assignors have sold, assigned and transferred, and by these presents do sell, assign and transfer unto Assignee, all of the entire right, title, and interest in, to and under said invention disclosed, described and claimed or intended so to be in said application, and in, to and under said application for United States Letters Patent executed by Assignors this 3rd day of October, 1997, and any and all other applications thereon and arising therefrom, including any and all divisions and continuations thereof,

and any and all patents to be issued and obtained therefor and thereon, United States and foreign, including all reissues and extensions thereof.

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Assignors agree to assign and execute any and all other papers necessary or desirable for the procurement of Letters Patent on said invention in this and all foreign countries for the use of Assignee.

**Serial No. 08/948,135
Filed October 9, 1997

WITNESS Assignors' hands this 3rd day of October, 1997.

Bradley A. Coates
Bradley A. Coates
J. B. Coates
J. B. Coates

James E. Van Hoeck
James Van Hoeck

Jeffery W. Poyner
Jeffery Poyner
Jeffrey W. Poyner
J. W. Poyner



UNITED STATES DEPARTMENT OF COMMERCE
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Washington, D.C. 20231

OCTOBER 28, 1998

PTAS

WOODARD, EMHARDT ET AL
J. ANDREW LOWES
111 MONUMENT CIRCLE, SUITE 3700
BANK ONE CENTER/TOWER
INDIANAPOLIS, INDIANA 46204-5137



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RECORDATION DATE: 08/07/1998

REEL/FRAME: 9366/0071
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BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

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COATES, BRADLEY J.

DOC DATE: 10/03/1997

ASSIGNOR:
VAN HOECK, JAMES

DOC DATE: 10/03/1997

ASSIGNOR:
POYNER, JEFFERY W.

DOC DATE: 10/03/1997

ASSIGNEE:
SDGI HOLDINGS, INC.
1800 PYRAMID PLACE
MEMPHIS, TENNESSEE 38132

SERIAL NUMBER: 08948135
PATENT NUMBER:

FILING DATE: 10/09/1997
ISSUE DATE:

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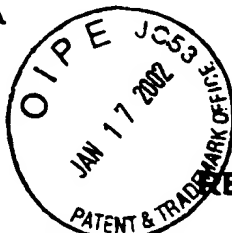
NOV 9 1998

9366/0071 PAGE 2

STEVEN POST, EXAMINER
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08-11-1998

U.S. Department of Commerce
Patent and Trademark Office



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TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

☒ New
☐ Resubmission (Non-Recordation)
Document ID#
☐ Correction of PTO Error
Reel # Frame #
☐ Corrective Document
Reel # Frame #

Conveyance Type

☒ Assignment ☐ Security Agreement
☐ License ☐ Change of Name
☐ Merger ☐ Other
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☐ Departmental File ☐ Secret File

Conveying Party(ies)

☒ Mark if additional names of conveying parties attached

Name (line 1)

Execution Date
Month Day Year

Name (line 2)

Second Party

Name (line 1)

Execution Date
Month Day Year

Name (line 2)

Receiving Party

☐ Mark if additional names of receiving parties attached

Name (line 1)

Name (line 2)

Address (line 1)

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Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

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Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

WATKINS 00000015 08/11/98 01:50

Correspondent Name and Address

Area Code and Telephone Number

(317) 634-3456

Name

J. Andrew Lowes

Address (line 1)

Woodard, Emhardt, Naughton, Moriarty & McNett

Address (line 2)

111 Monument Circle, Suite 3700

Address (line 3)

Bank One Center/Tower

Address (line 4)

Indianapolis, Indiana 46204-5137

Pages

Enter the total number of pages of the attached conveyance document including any attachments.

8

Application Number(s) or Patent Number(s)

☐ Mark if additional numbers attached

Enter either the Patent Application Number or the Patent Number (DO NOT ENTER BOTH numbers for the same property).

Patent Application Number(s)

08/948,135

Patent Number(s)

If this document is being filed together with a new Patent Application, enter the date the patent application was signed by the first named executing inventor.

Month Day Year

Patent Cooperation Treaty (PCT)

Enter PCT application number
only if a U.S. Application Number
has not been assigned.

PCT

PCT

PCT

PCT

PCT

PCT

Number of Properties

Enter the total number of properties involved.

#

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41): \$

40.00

Method of Payment:
Deposit Account

Enclosed ☒

Deposit Account ☐

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

23-3030

Authorization to charge additional fees:

Yes

☒

No

☐

Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Name of Person Signing

J. Andrew Lowes

Signature

J. Andrew Lowes

Date

August 4, 1998

RECORDATION FORM COVER SHEET
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PATENT

Conveying Party(ies)

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Name (line 1) Jeffery W. Poyner

Execution Date
Month Day Year
10 3 97

Name (line 2)

Name (line 1)

Execution Date
Month Day Year

Name (line 2)

Name (line 1)

Execution Date
Month Day Year

Name (line 2)

Receiving Party(ies)

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Application Number(s) or Patent Number(s)

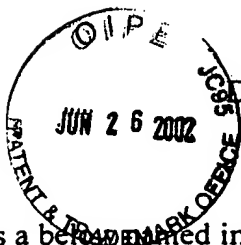
☐ Mark if additional numbers attached

Enter either the Patent Application Number or the Patent Number (DO NOT ENTER BOTH numbers for the same property).

Patent Application Number(s)

Patent Number(s)

08/948,135



DECLARATION AND POWER OF ATTORNEY
FOR PATENT APPLICATION

Docket No. 4002-1643

As a below-named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention in **BONE GRAFT**, the specification of which

(check one) ☒ is attached hereto.
☐ was filed on _____ as Application Serial No. _____
and was amended on _____ (if applicable).

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, §1.56(a).

I hereby claim foreign priority benefits under Title 35, United States Code, §119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

Prior Foreign Application(s)			Priority Claimed	
_____ (Number)	_____ (Country)	_____ (Day/Month/Year Filed)	_____ Yes	_____ No
_____ (Number)	_____ (Country)	_____ (Day/Month/Year Filed)	_____ Yes	_____ No
_____ (Number)	_____ (Country)	_____ (Day/Month/Year Filed)	_____ Yes	_____ No

I hereby claim the benefit under Title 35, United States Code, §120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided



by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, §1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

(Application Serial No.)	(Filing Date)	(Status - patent/pending/abandoned)
--------------------------	---------------	-------------------------------------

(Application Serial No.)	(Filing Date)	(Status - patent/pending/abandoned)
--------------------------	---------------	-------------------------------------

I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith: Harold R. Woodard, No. 16,214; C. David Emhardt, No. 18, 483; Joseph A. Naughton, Jr., No. 19, 814; John V. Moriarty, No. 26,207; John C. McNett, No. 25,533; Thomas Q. Henry, No. 28,309; James M. Durlacher, No. 28,840; Charles R. Reeves, No. 28,750; Vincent O. Wagner, No. 29,596; Steve Zlatos, No. 30,123; Spiro Bereveskos, No. 30,821; William F. Bahret, No. 31,087; Clifford W. Browning, No. 32,201; R. Randall Frisk, No. 32,221; Daniel J. Lueders, No. 32,581; Michael D. Beck, No. 32,722; Kenneth A. Gandy, No. 33,386; Timothy N. Thomas, No. 35,714; Kerry P. Sisselman, No. 37,237; Kurt N. Jones, No. 37,996; John H. Allie, No. 39,088; Jeffrey A. Michael, No. 37,394; Deborah R. Beck, No. 37,370; Holiday W. Banta, No. 40,311; Troy J. Cole, No. 35,102; L. Scott Paynter, No. 39,797; Lisa A. Hiday, No. 40,036; Darrin Wesley Harris, No. P40,636; Matthew R. Schantz, No. P40,800; and Gregory B. Coy, No. P40,967.

Address all telephone calls to: Michael D. Beck at (317) 634-3456
Address all correspondence to: Michael D. Beck, Esquire
Woodard, Emhardt, Naughton, Moriarty & McNett
Bank One Center/Tower
111 Monument Circle, Suite 3700
Indianapolis, Indiana 46204-5137

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of sole or first inventor: Bradley A. Coates ^{20K JWH and}

Inventor's

Signature: Bradley A. Coates

Date of Signature: 10/1/97

Residence: 1760 Nuckolls Road, Rossville, TN 38066

Citizenship: U.S.A.

Post Office Address: 1760 Nuckolls Road, Rossville, TN 38066

Full name of second inventor: James Van Hoeck

Inventor's

Signature: James E. Van Hoeck

Date of Signature: 9-30-97

Residence: 754 Tealwood Lane, Cordova, TN 38018

Citizenship: U.S.A.

Post Office Address: 754 Tealwood Lane, Cordova, TN 38018

Full name of third inventor: Jeffery Poyner ^{20K JWH and}

Jeffrey W. Poyner

Inventor's

Signature: Jeffrey W. Poyner

Date of Signature: 9/30/97

Residence: 234 Oxford Drive, Atoka TN 38004

Citizenship: U.S.A.

Post Office Address: 234 Oxford Drive, Atoka TN 38004

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Complete if Known

Application Number **09/448,086**
Filing Date **November 23, 1999**
First Named Inventor **Bradley J. Coates**
Group Art Unit **3738**
Examiner Name **ISABELLA**
Attorney Docket Number **4002-2236**

METHOD OF PAYMENT

1. ☐ The Commissioner is hereby authorized to charge indicated fees and credit any over payments to:

Deposit Account Number **23-3030**
Deposit Account Name **Woodard, Emhardt, Naughton, Moriarty & McNett**

- ☒ Charge any Additional Fee Required Under 37 CFR 1.16 and 1.17
☐ Applicant claims small entity status. See 37 CFR 1.27.

2. ☒ Payment Enclosed:

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FEE CALCULATION

1. BASIC FILING FEE

Large Fee Code	Entity Fee (\$)	Small Fee Code	Entity Fee (\$)	Fee Description	Fee Paid
101	710	201	355	Utility Filing Fee	
106	320	206	160	Design Filing Fee	
107	490	207	245	Plant Filing Fee	
108	710	208	355	Reissue Filing Fee	
114	150	214	75	Provisional Filing Fee	
SUBTOTAL (1) (\$)					

2. EXTRA CLAIM FEES

			Extra Claims		Fee From Below		Fee Paid
Total Claims	41	-28** =	13	X	18	=	\$234.00
Independent Claims	4	-3** =	1	X	80	=	\$ 80.00
Multiple Dependent						=	

Large Fee Code	Entity Fee (\$)	Small Fee Code	Entity Fee (\$)	Fee Description
103	18	203	9	Claims in excess of 20
102	80	202	40	Independent claims in excess of 3
104	270	204	135	Multiple dependent claim, if not paid
109	80	209	40	**Reissue independent claims over original patent
110	18	210	9	**Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$)**314.00**

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Fee Code	Entity Fee (\$)	Small Fee Code	Entity Fee (\$)	Fee Description	Fee Paid
105	130	205	65	Surcharge - late filing fee or oath	
127	50	227	25	Surcharge - late provisional filing fee or cover sheet.	
139	130	139	130	Non-English specification	
147	2,520	147	2,520	For filing a request for <i>ex parte</i> reexamination	
112	920*	112	920*	Requesting publication of SIR prior to Examiner	
113	1,840*	113	1,840*	Requesting publication of SIR after Examiner action	
115	110	215	55	Extension for reply within first month	
116	390	216	195	Extension for reply within second month	
117	890	217	445	Extension for reply within third month	
118	1,390	218	695	Extension for reply within fourth month	
128	1,890	228	945	Extension for reply within fifth month	
119	310	219	155	Notice of Appeal	
120	310	220	155	Filing a brief in support of an appeal	
121	270	221	135	Request for oral hearing	
138	1,510	138	1,510	Petition to institute a public use proceeding	
140	110	240	55	Petition to revive - unavoidable	
141	1,240	241	620	Petition to revive - unintentional	
142	1,240	242	620	Utility issue fee (or reissue)	
143	440	243	220	Design issue fee	
144	600	244	300	Plant issue fee	
122	130	122	130	Petitions to the Commissioner	
123	50	123	50	Petitions related to provisional applications	
126	180	126	180	Submission of Information Disclosure Stmt	
581	40	581	40	Recording each patent assignment per property (times number of properties)	\$40.00
146	710	246	355	Filing a submission after final rejection (37 CFR 1.129(a))	
149	710	249	355	For each additional invention to be examined (37 CFR 1.129(b))	
179	710	279	355	Request for Continued Examination (RCE)	
169	900	169	900	Request for expedited examination of a design application	

Terminal Disclaimer

Other Fee (specify) _____

* Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$)**150.00**

SUBMITTED BY

Name (Print/Type) **James B. Myers, Jr.**

Registration No. **42,021**
(Attorney/Agent)

Telephone **(317) 634-3456**

Signature

James B. Myers Jr.

Date **November 14, 2001**

Warning: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

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EXHIBIT

A



**RESPONSE UNDER 37 C.F.R. §1.116
EXPEDITED PROCEDURE
EXAMINING GROUP 3738**

DNK-1997-010-PA-CON2:JBM:139484

Atty. Dkt. 4002-2236

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:)
Bradley J. Coates et al.) Examiner
Serial No. 09/448,086) Isabella
Filed: November 23, 1999)
BONE GRAFTS) Group Art Unit 3738
Submitted
November 14, 2001

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231 on: November 14, 2001

JAMES B. MYERS, JR.
Name of Registered Representative

James B. Myers Jr.
Signature
November 14 2001
Date of Signature

**AMENDMENT AND RESPONSE TO FINAL OFFICE ACTION
UNDER 37 C.F.R. §1.116**

Hon. Commissioner for Patents
Washington, D.C. 20231

Sir:

In response to the Office Action dated August 14, 2001, Applicants respectfully request entry of the following amendments and consideration of the accompanying remarks. Marked up copies of the amended claims are attached to this Response on a separate sheet entitled Version with Markings to Show Changes. An Assignment, Assignment Transmittal Form and a Terminal Disclaimer are filed concurrent with this Response. Additionally, please provide any extensions of time that may be necessary and charge any fees that may be due to Deposit Account No. 23-3030, but do not include any payment of issue fees that are or may become due.

AMENDMENTS

Please amend the following claims:

20. (Amended) A bone graft for insertion between adjacent vertebrae, said graft comprising a cortical bone slice from a long bone, said cortical bone slice comprising:

a substantially planar superior bone engaging surface;

an opposite inferior bone engaging surface; and

a wall provided between the superior bone engaging surface and the inferior bone engaging surface, said wall comprising an anterior wall portion having a convexly curved exterior surface, and an opposite posterior wall portion, wherein the graft comprises a first set of migration resistant surface features comprising grooves, teeth, blades or a combination thereof.

24. (Amended) The graft of claim 20 comprising a second set of migration resistant surface features.

Please add the following claims:

29. (Added) The graft of claim 20 wherein the inferior bone engaging surface is substantially planar.

30. (Added) The graft of claim 20 wherein the superior bone engaging surface and the inferior bone engaging surface include migration resistant surface features.

31. (Added) A bone graft for insertion between adjacent vertebrae, said graft comprising a cortical bone slice from a long bone, said cortical bone slice comprising:
a superior bone engaging surface;
an opposite inferior bone engaging surface; and
a first lateral wall positioned between the inferior bone engaging surface and the superior bone engaging surface and provided to lie substantially perpendicular to the superior bone engaging surface; said lateral wall positioned between a posterior wall and an anterior wall having a convexly curved exterior surface, and wherein said graft comprises a first set of migration resistant surface features selected from the group consisting of: grooves, teeth, blades or a combination thereof.

32. (Added) The graft of claim 31 comprising a second lateral wall opposite the first lateral wall.

33. (Added) The graft of claim 32 wherein the second lateral wall is provided to lie substantially perpendicular to the superior bone engaging surface.

34. (Added) The graft of claim 31 wherein the posterior wall is substantially planar.

35. (Added) The graft of claim 31 wherein the first set of migration resistant surface features are arranged in series.

36. (Added) The graft of claim 31 comprising a second set of migration resistant surface features.

37. (Added) The graft of claim 31 comprising an interior chamber.

38. (Added) The graft of claim 37 wherein the bone engaging superior surface defines a first opening and the inferior bone engaging surface defines a second opening, wherein each of the first and second openings are in communication with the chamber.

39. (Added) The graft of claim 31 comprising an osteoinductive material.

40. (Added) The graft of claim 31 comprising cancellous bone material.

41 (Added) The graft of claim 30 wherein the superior bone engaging surface and the inferior bone engaging surface comprise migration resistant surface features.

REMARKS

Entry of the above amendments and consideration of the following remarks are respectfully requested. Upon entry of the above amendments, this application will contain claims 1-41 pending and under consideration. Claims 1-19 stand rejected under the judicially created doctrine of obviousness-type double patenting over the claims of Coates et al. (U.S. Patent No. 5,989,289). Claims 20-28 stand rejected under 35 U.S.C. §102(b) over Carter et al. (WO/97/25,945). For the reasons discussed below, Applicants believe that the claimed invention is patentable over the cited art and request reconsideration leading to timely allowance of this application.

Obviousness-Type Double Patenting Rejections

Claims 1-19 were rejected under the judicially created doctrine of obviousness-type double patenting over the claims of Coates et al. (U.S. Patent No. 5,989,289). Applicants' Attorney submits concurrent with this Response a Terminal Disclaimer to disclaim the terminal part of any patent granted on the present application that would extend beyond the expiration date of U.S. Patent No. 5,989,289 and the required statutory fee for filing the Terminal Disclaimer. Accordingly, Applicants believe this rejection is overcome and request withdrawal of these rejections.

Rejections under 35 U.S.C. §102(b)

Claims 20-28 were rejected under 35 U.S.C. §102(b) over Carter et al. (WO/97/25,945). Applicants have amended claim 20 to recite that the superior bone engaging surface is substantially planar. Carter et al. discloses a dowel that is cylindrical. Consequently, the bone engaging surfaces are curved. Applicants believe the rejections over claim 20 and over claims 21-28, which depend either directly or indirectly from claim 20, are overcome. Accordingly, Applicants request withdrawal of these rejections.

Previously Cited References

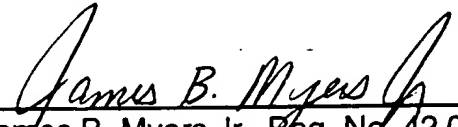
Applicants request that the Examiner consider the references submitted in this case on June 11, 2001, and acknowledge his consideration by initialing the citation form 1449 (modified) submitted with the references and returning a copy of the initialed form to undersigned attorney.

Conclusion

In view of the foregoing remarks, Applicants respectfully submit that the cited references, either singly, or in combination, do not disclose or make obvious the claimed invention. Accordingly, reexamination leading to withdraw of all the outstanding rejections and passage of this application containing claims 1-41 are respectfully requested. Additionally, the Examiner is invited to telephone the undersigned attorney if there are any questions about this submission or other matters, which may be addressed in that fashion.

Respectfully submitted,

By:


James B. Myers Jr., Reg. No. 42,021
WOODARD EMHARDT NAUGHTON
MORIARTY & McNETT
3700 Bank One Center Tower
111 Monument Circle
Indianapolis, IN 46204-5137
(317) 634-3456

**VERSION WITH MARKINGS TO
SHOW CHANGES**

In the Claims

20. (Amended) A bone graft for insertion between adjacent vertebrae, said graft comprising a cortical bone slice from a long bone, said cortical bone slice comprising:

a substantially planar superior bone engaging surface;
an opposite inferior bone engaging surface; and
a wall provided between the superior bone engaging surface and the inferior bone engaging surface, said wall comprising an anterior wall portion having a convexly curved exterior surface, and an opposite posterior wall portion, wherein the graft comprises a first set of migration resistant surface features comprising grooves, teeth, blades or a combination thereof.

24. (Amended) The graft of claim 20 comprising a second set of migration resistant surface features.



**RESPONSE UNDER 37 C.F.R. §1.116
EXPEDITED PROCEDURE
EXAMINING GROUP 3738**

DNK-1997-010-PA-CON2:JBM:139865

Atty. Dkt. 4002-2236

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:)
Bradley J. Coates et al.) Examiner
Serial No. 09/448,086) Isabella
Filed: November 23, 1999)
BONE GRAFTS) Group Art Unit 3738
Submitted
November 14, 2001

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231 on November 14, 2001.

JAMES B. MYERS, JR.
Name of Registered Representative

James B. Myers, Jr.
Signature

November 14 2001
Date of Signature

TERMINAL DISCLAIMER

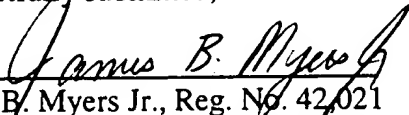
Hon. Commissioner for Patents
Washington, D. C. 2023
Sir:

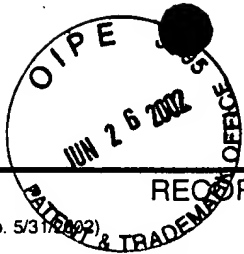
The undersigned hereby represents that the owner, Medtronic Sofamor Danek, Incorporated, has a 100% ownership interest in the above-captioned application and U.S. Patent No. 5,989,289, as indicated by assignment recorded in the U.S. Patent and Trademark Office on August 7, 1998, Reel/Frame 9366/0071 and the copy of the Assignment filed concurrent with this Terminal Disclaimer. The undersigned attorney of record, on behalf of Medtronic Sofamor Danek, Incorporated, hereby disclaims the terminal part of any patent granted on the above-captioned application that would extend beyond the expiration date of U.S. Patent No. 5,989,289, issued November 23, 1999, and hereby agrees that any patent granted on the above-identified patent application shall be enforceable only for and during such period that the legal title to said patent shall be the same as the legal title to U.S. Patent No. 5,989,289. This disclaimer shall run with any patent granted on the above-captioned application and to be binding upon the grantees, their successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. §§154 to 156 and 173 of the above-identified patent, as shortened by any terminal disclaimer filed prior to the patent grant, in the event that the granted patent; expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. §1.321, has all claims cancelled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as shortened by any terminal disclaimer filed prior to its grant.

Applicants enclose the statutory fee pursuant to 37 C.F.R. §1.20 (d) of \$110.00. In addition, please provide any extensions of time that may be necessary and charge any fees that may be due to Deposit Account No. 23-3030, but do not include any payment of issue fees that are or may become due.

Respectfully submitted,

By: 
James B. Myers Jr., Reg. No. 42,021
Woodard, Emhardt, Naughton, Moriarty & McNett
Bank One Center Tower
111 Monument Circle, Suite 3700
Indianapolis, Indiana 46204-5137
(317) 634-3456



WENMM-1595 (05/01)

Form PTO-1595
(Rev. 03/01)
OMB No. 0651-0027 (exp. 5/31/2002)

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Bradley J. Coates
James Van Hoeck
Jeffrey W. Poynter

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

3. Nature of conveyance:

- ☒ Assignment ☐ Merger
☐ Security Agreement ☐ Change of Name
☐ Other _____

Execution Date: October 3, 1997

2. Name and address of receiving party(ies)

Name: SDGI Holdings, Inc.

Internal Address: _____

Street Address: 1800 Pyramid PlaceCity: Memphis State: Tennessee Zip: 38132Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application number(s) or registration number(s):

If this document is being filed together with a new application, the execution date of the application is: _____

A. Patent Application No.(s)
09/448,086

B. Patent No.(s)

Additional number(s) attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: James B. Myers, Jr.

Internal Address: Woodard, Emhardt, Naughton, Moriarty
& McNett

Street Address: Bank One Center/Tower, 111 Monument
Circle, Suite 3700

City: Indianapolis State: Indiana Zip: 46204-51376. Total number of applications and patents involved 17. Total fee (37 CFR 3.41) \$ 40.00

- ☒ Enclosed
☐ Authorized to be charged to deposit account

8. Deposit account number:

23-3030

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9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

James B. Myers, Jr.
Name of Person Signing

Signature

November 14, 2001
Date

Total number of pages including cover sheet, attachments, and document: 9

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UNITED STATES DEPARTMENT OF COMMERCE
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ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

OCTOBER 28, 1998

PTAS

WOODARD, EMHARDT ET AL
J. ANDREW LOWES
111 MONUMENT CIRCLE, SUITE 3700
BANK ONE CENTER/TOWER
INDIANAPOLIS, INDIANA 46204-5137



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NUMBER OF PAGES: 7

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:
COATES, BRADLEY J.

DOC DATE: 10/03/1997

ASSIGNOR:
VAN HOECK, JAMES

DOC DATE: 10/03/1997

ASSIGNOR:
POYNER, JEFFERY W.

DOC DATE: 10/03/1997

ASSIGNEE:
SDGI HOLDINGS, INC.
1800 PYRAMID PLACE
MEMPHIS, TENNESSEE 38132

SERIAL NUMBER: 08948135
PATENT NUMBER:

FILING DATE: 10/09/1997
ISSUE DATE:

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9366/0071 PAGE 2

STEVEN POST, EXAMINER
ASSIGNMENT DIVISION
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08-11-1998



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Area Code and Telephone Number (317) 634-3456

Name J. Andrew Lowes

Address (line 1) Woodard, Emhardt, Naughton, Moriarty & McNett

Address (line 2) 111 Monument Circle, Suite 3700

Address (line 3) Bank One Center/Tower

Address (line 4) Indianapolis, Indiana 46204-5137

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Patent Number(s)

08/948,135

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J. Andrew Lowes

Date

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Name (line 1) Jeffery W. Poyner

Execution Date
Month Day Year

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Execution Date
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Execution Date
Month Day Year

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Patent Application Number(s)

Patent Number(s)

08/948,135

ASSIGNMENT

WHEREAS, Bradley A. Coates, James Van Hoeck and Jeffery Poyner, of 1760 Nuckolls Road, Rossville, TN 38066; 754 Tealwood Lane, Cordova, TN 38018; and 234 Oxford Drive, Atoka, TN 38004, hereinafter referred to as Assignors, have made a new and useful invention in **BONE GRAFT** for which Assignors have made or will make application for Letters Patent of the United States; and

WHEREAS, SDGI Holdings, Inc., hereinafter referred to as Assignee, a corporation of the State of Delaware having a principal place of business 1800 Pyramid Place, Memphis, TN 38132 desires to acquire all of the entire right, title, and interest in, to and under said invention disclosed, described and claimed or intended so to be in said application, and in, to and under said application, and in, to and under any and all Letters Patent, United States and foreign, which may be obtained therefor and thereon;

NOW, THEREFORE, to all whom it may concern, be it known that for an in consideration of the sum of One Dollar (\$1.00) and other good, valuable and sufficient considerations to Assignors in hand paid, the receipt of which is hereby acknowledged, Assignors have sold, assigned and transferred, and by these presents do sell, assign and transfer unto Assignee, all of the entire right, title, and interest in, to and under said invention disclosed, described and claimed or intended so to be in said application, and in, to and under said application for United States Letters Patent executed by Assignors this 3rd day of October, 1997, and any and all other applications thereon and arising therefrom, including any and all divisions and continuations thereof,

and any and all patents to be issued and obtained therefor and thereon, United States and foreign, including all reissues and extensions thereof.

Assignors hereby authorize and request the firm of Woodard, Emhardt, Naughton, Moriarty & McNett of Bank One Center Tower, 111 Monument Circle, Suite 3700, Indianapolis, Indiana 46204-5137 to insert here in parentheses (**) the date and serial number of said application when officially known and Assignors hereby authorize and request the Honorable Assistant Secretary and Commissioner of Patents and Trademarks to issue said Letters Patent to Assignee, its assigns and legal representatives.

Assignors agree to assign and execute any and all other papers necessary or desirable for the procurement of Letters Patent on said invention in this and all foreign countries for the use of Assignee.

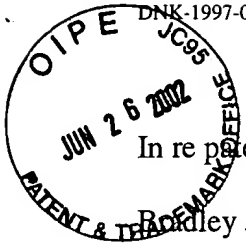
**Serial No. 08/948,135
Filed October 9, 1997

WITNESS Assignors' hands this 3rd day of October, 1997.

Bradley A. Coates
Bradley A. Coates
J. ~~BC~~ ~~gub~~
JH

James E. Van Hoeck
James Van Hoeck

Jeffery W. Poyner
Jeffery Poyner
Jeffrey W. Poyner ~~JP~~
JH ~~FS~~



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:

Rodley J. Coates et al.

Serial No. 09/448,086

Filed: November 23, 1999

BONE GRAFTS

)
) Examiner
) Isabella
)
) Group Art Unit 3738
)
)
)

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231 on

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 Date

James B. Myers, Jr.

Name of Registered Representative

James B. Myers Jr.
 Signature

June 20, 2002
 Date of Signature

TERMINAL DISCLAIMER

Hon. Commissioner for Patents
 Washington, D. C. 2023

The undersigned hereby represents that the owner, Medtronic Sofamor Danek, Incorporated, has a 100% ownership interest in the above-captioned application and U.S. Patent No. 5,989,289, as indicated by assignment recorded in the U.S. Patent and Trademark Office on August 7, 1998, at Reel/Frame 9366/0071 and the assignment recorded on January 17, 2002 at Reel/Frame 012491/0666 both which are attached to this Terminal Disclaimer. The undersigned attorney of record, on behalf of Medtronic Sofamor Danek, Incorporated, hereby disclaims the terminal part of any patent granted on the above-captioned application that would extend beyond the expiration date of U.S. Patent No. 5,989,289, issued November 23, 1999, and hereby agrees that any patent granted on the above-identified patent application shall be enforceable only for and during such period that the legal title to said patent shall be the same as the legal title to U.S. Patent No. 5,989,289. This disclaimer shall run with any patent granted on the above-captioned application and to be binding upon the grantees, their successors or assigns.

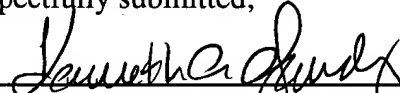
In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full



statutory term as defined in 35 U.S.C. §§ 154 to 156 and 173 of the above-identified patent, as shortened by any terminal disclaimer filed prior to the patent grant, in the event that the granted patent; expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. § 1.321, has all claims cancelled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as shortened by any terminal disclaimer filed prior to its grant.

Applicants enclose the statutory fee pursuant to 37 C.F.R. § 1.20 (d) of \$110.00. In addition, please provide any extensions of time that may be necessary and charge any fees that may be due to Deposit Account No. 23-3030, but do not include any payment of issue fees that are or may become due.

Respectfully submitted,

By: 

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